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OUR BUNGLING ELECTORAL SYSTEM

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According to popular parlance, we elect a President and vice-president, on the Tuesday following the first Monday of November of each fourth year, by vote of the people. It is well known however that, technically speaking, we do not choose these officers on that day or at any time by popular suffrage. Instead of that, we choose in each state a committee that is called the electoral college; and these electors meet on the second Monday of January and elect the President and vice-president by ballot. The theory of the Constitution¹ is that these electors are not to be pledged or obligated to vote for any particular person, but that they and not the people shall really make the choice.

But, practically from the start, and contrary to the expectation of those who framed the Constitution, the choice of President and vice-president was seized by state legislatures and afterwards transferred to the people, through the device of appointing electors that were virtually pledged to designated candidates. So the electoral colleges have failed of their purpose and become a useless complication. And not only are they useless, but objectionable also and dangerous in many and serious ways.

This paper will endeavor to show that our present system of presidential election is bad in every step of the process, viz. in *a.* the appointment of the electors, *b.* the membership and proceedings of the electoral colleges, *c.* the count of the vote in congress, *d.* the interval between the election and the time when the President takes office, and *e.* the election by the house of representatives in case the electors fail to give a majority vote to any candidate. It will furthermore endeavor to show

¹ Constitution, Art. II. 1¹⁻³; Am. XII.

f. some evils resulting from the system as a whole, and particularly from the form it has taken because of the twelfth amendment. Under each of these headings a number of specific faults will be indicated. And finally, another plan of presidential election will be outlined, and proposed for adoption in place of the system we now have.

DEFECTS OF THE PRESENT SYSTEM

Appointment of the Electors

The Constitution does not direct how the electors are to be chosen, but expressly empowers the legislature of each state to determine how they shall be, to use its own expression, "appointed."² This word is not a democratic term, and does not suggest a popular election. Commenting on this provision, a congressman once said, very aptly, that a state legislature may vest the appointment of electors in "a board of bank directors, a turnpike corporation, or a synagogue." As a matter of fact, the legislatures of the different states chose either to appoint the electors by their own votes, or to have them chosen by the people. In the first two elections, choice was made by the legislatures in a majority of the states. But gradually this method was supplanted by that of popular voting. By 1832, only South Carolina chose electors by the legislature; but that state persisted in the practice until the time of the Civil War. From that time onward, electors have been chosen by the people in all the states.

In this popular choice, all the electors of a state may be chosen on one ticket, or each district may elect one member of the electoral college. The choice by districts has, however, to be somewhat modified by the fact that each state appoints two more electors than it has congressmen in the national house of representatives, and these two have to be chosen in some other manner. Notwithstanding this qualification, the district system was tried by a number of states in the early years, but was

² Constitution, Art. II, 1st:

gradually supplanted by the method of a general ticket. In 1828 electors were chosen by the people on the general-ticket system in eighteen states, on the district-system in two, and in two others by a compromise between these rival methods. Some of the eighteen states had tried for many years to secure the district-system by an amendment to the federal Constitution. And this suggests one of the reasons why the general-ticket system has prevailed over the other method. If some states employ it, those without it are at a disadvantage politically, and so for their own interest are compelled to adopt it. If, for example, Massachusetts, which is Republican in politics, should have the district system, the vote of her eighteen electors would be divided, six of them—let us suppose—being of the Democratic party. But if Missouri should at the same time use the general-ticket system, and by this means choose none but Democrats for her eighteen electors, then Massachusetts Republicans would be outvoted two to one by the solid vote of Missouri combined with that of her own Democrats. So if Missouri has the general-ticket system, Massachusetts must have it, and similarly Missouri is compelled to have it if Massachusetts uses it; and so it is with all the states. The general ticket-system cannot be abolished except by constitutional amendment.

Another and perhaps more fundamental explanation for the general-ticket system is the ambition of the majority party in each state to increase its voting strength. By the general ticket, the whole vote of the state is in effect cast for the majority party. Occasionally it may happen however, that the minority party may get temporary control of the legislature and pass a law to establish the district system. This for example was done by the Democratic party in Michigan in 1892. But such a reversion to the district system is rare and always temporary; for when the normally dominant party regains control of the legislature the law is repealed, or if the party that enacted it becomes dominant it is for the same reason repealed. So the general ticket is kept in the states because it gives an immense political advantage to whichever party is dominant in each of them. Here appears, then, the first of the evils connected with our electoral system.

1. The general-ticket system is unjust to the minority in the state. That minority, which in some cases is nearly equal to the majority, is not simply in effect disfranchised by being denied representation in the electoral college, but even compelled in this way to be counted as voting on the other side. In Indiana in 1916, the plurality for Hughes was 0.9 per cent of the total vote for all candidates, and was less than one-third the vote for Benson, the Socialist candidate, and less than one-half that for Hanly, the Prohibition candidate. But all the fifteen electoral votes of Indiana were cast for Hughes, as if the Democrats, the Socialists, and the Prohibitionists were all for him. In New Hampshire at the same time the plurality for Wilson was only 56 votes, which was 0.06 per cent. But this gave the four electoral votes to Wilson, as if every citizen in that state were for him. In New York in the same year, if the electors had been chosen according to the popular vote, Benson would have had one representative in the electoral college, while in Pennsylvania, by the same rule, Benson would have had one elector and Hanly another. But in New York and Pennsylvania these Socialist and Prohibition voters were compelled by the general-ticket system to be counted in the electoral vote for Hughes. And in every close state nearly half the voters were compelled to be counted for a candidate to whom they were opposed. But the injustice does not stop there; it extends to the nation as a whole.

2. The same system sometimes defeats the popular will by rejecting the candidate that had polled the highest popular vote and electing another in his stead. This has happened twice within the last fifty years. The first time was in 1877, when Hayes was elected in spite of Tilden's plurality; and the second in 1889, when Harrison was elected notwithstanding the fact that Cleveland was slightly in the lead in the popular vote.

3. The general ticket increases sectionalism, and gives undue political ascendancy to groups of large states. Sectionalism is increased by it, because all minor parties in a state are ignored. The "solid south" would show far less solidarity if it were not for the general ticket. Many of the southern states poll a Republican vote of substantial size. For example, in 1916,

the Republican vote was about 39 per cent in Missouri, 43 per cent in North Carolina and in Tennessee, and 46 per cent in Virginia and in Kentucky. Congress has had numerous Republican representatives from the South; and the same districts that sent these men to Washington would be likely to choose Republican electors, were it not for the general ticket.

This effect of an artificial sectional solidarity combines also at times with the inordinate power of groups of large states. The very large states of themselves have excessive power through the general ticket, and by combination this power may become fairly overwhelming. It is theoretically possible for thirteen of our larger states to elect a candidate to whom the other thirty-five should be opposed. Indeed there are twelve states that together have an electoral vote lacking but three for a majority. But fortunately some of these are in the south, and others in the north, so that they are not likely to combine their forces. Passing however into probabilities, we find that Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, and Iowa—eleven contiguous and politically harmonious large states—have a combined electoral vote of 236, which is only 30 short of a majority. If we combine also with these the five other New England states and West Virginia, these seventeen will have a majority of the electoral votes. And this combination is a natural one. These states form an unbroken area of our territory, and have a similar climate, similar economic and racial conditions, similar interests, and similar political views. Most of them are Republican in political preference, several being what is called “doubtful,” but hardly any of them strongly inclined to the Democratic party. On other than partisan issues also they are inclined to be in agreement. They are as a rule conservative in their attitude toward social and political problems. These states are then inclined to think and vote alike, and so, in presidential elections, they may decide the issue. There would be no injustice in this, if their vote expressed the sentiment of nearly all their people, for they contain a little more than half our total population. But their vote never does stand for anything like a unanimous

sentiment. Sometimes nearly 49 per cent of New York, the largest state, may be on the other side. So if these seventeen states vote alike, it does not necessarily show a majority opinion in the nation. But through the general ticket this solid block of north-central and north-eastern states forms a section that tends to become a sort of Prussia dominating the rest of our federal union. Since Lincoln's day every President but one has come from this section. The exception is Andrew Johnson, and his case is of no importance, as he was not elected to that office. Furthermore, every presidential candidate of the two leading parties, has been chosen out of this section. It is of course not of much importance whether our Presidents come from the north, the south, the east, or the west; but when the leading parties always choose their candidates from one section, it shows that the favor of that section must be secured in order to win an election. This overweening influence is obtained through the general-ticket system, by which the states obtain a false solidarity. And their political power is enhanced also because among them are several "doubtful" states whose vote may turn the election. And this brings us to another evil.

4. The general-ticket system gives an excessive strategic importance to some of the "doubtful" states, and by this means fosters "machine-politics" and corruption. The "doubtful" states are made such by the general ticket. Without it, they would not be "doubtful" but divided in their politics. In these states the voters of the two leading parties are in nearly equal proportions, so that often it is uncertain to which side the electoral vote may go. A large "doubtful" state may decide the result of the election, and sometimes by a very small margin of popular votes. The election of 1916 was decided by a plurality for Wilson in California of less than four thousand, or 0.4 per cent of the popular vote of the state. On the other hand, the plurality for Hughes in Indiana was about seven thousand, or 0.9 per cent; and in Minnesota it was—to quote the exact figure—merely 396, or 0.1 per cent. If 3500 of the votes for Hughes in Indiana had been cast instead for Wilson, or if only 199 of the Hughes votes in Minnesota had been for

Wilson, he could have won the election even without the help of California. Each of these three "doubtful" states was accordingly pivotal in the election of 1916.

But New York, on account of its immense electoral vote, and because it is nearly equally divided politically, is more frequently than any other the pivotal state. In 1844, by a margin of merely 1.1 per cent of its popular vote, it turned the election from Clay to Polk. In 1884, New York gave Cleveland the insignificant plurality of a little more than one thousand, or 0.1 per cent of the vote of the State. This secured for him the State's entire electoral vote, which was nearly 9 per cent of that of the whole nation. If 575 of these Cleveland votes had been cast instead for the Republican candidate, Blaine would have been elected. But in 1888 New York turned against Cleveland by a plurality of between fourteen and fifteen thousand. So through losing to Harrison the 36 votes of the New York electoral college, he lost the election itself, notwithstanding that he had a plurality in the entire nation of nearly a hundred thousand. A state that is at once so fickle and so powerful has enormous influence in the nation's politics; and the great extent of this influence is due to the general-ticket system. Moreover this system has fostered a class of political leaders that are in the business of manipulating elections, and has encouraged bribery and other forms of corruption. It would hardly pay to buy votes, or to resort to fraudulent practices, if there were no strategic points where the transfer of a few votes might turn the election. But by purchasing merely 575 votes in New York State in 1884, the Republicans might have secured the election for Blaine.

5. Another fault of a different sort inheres in the general-ticket system in its liability, now and then, to fail of its purpose to give a solid vote of the state.

Sometimes the vote of a state, through errors or whims of the voters, causes a divided electoral college. Some voters may have a dislike of one or more of the electoral candidates of their party, or a partiality for one or more of those proposed by the other party. And others may make a mistake in marking the ticket. In Maryland, in 1904, more than 2500 Republican

voters placed their mark after the name of the first electoral candidate in their party's list, instead of putting it in the square above. In consequence of this error the state, which should have chosen eight Republican electors, chose only one Republican and seven Democratic. Similar errors with similar results have been made in other states.

This completes the list of evils growing out of the general-ticket system. But there is yet another evil connected with the choice of electors.

6. The apportionment of electors gives unduly large representation to small states. The electors for each state are "equal to the whole number of senators and representatives" to which it is entitled in congress.³ The number of representatives in congress is apportioned according to the population, except that no state, however small, is to be denied representation by one member.⁴ Each state is entitled, then, to two more electors than would be its proportion on the basis of population alone. To a large state, this addition would be only a slight relative increase. But to a state having merely enough inhabitants to equal the apportionment for a member of congress, the addition of these two extra electors trebles the proportion of its electoral vote to its population; and if the inhabitants are still fewer, the state still has its three electors and the proportion is consequently further increased. Pennsylvania has nearly thirty-eight times the population of its neighboring State Delaware. But Delaware has 3 electoral votes and Pennsylvania only 38. Consequently a citizen's vote in Delaware counts for three times as much as that of his neighbor across the state line. In New Mexico it counts for nearly twice as much as in Texas; in Wyoming for three times as much as in Nebraska; and in Arizona for eight and in Nevada for nine times as much as in California.

³ Constitution, Art. II, 1².

⁴ Constitution, Art. I, 2³; Am. XIV, 2.

The Electoral Colleges

To the six evils already enumerated, three must be added relating to the next step in our electoral system after the electors have been chosen.

7. An elector may defeat the intention of those who choose him by voting for another candidate than the one for whom they expect him to vote. More than half a thousand electors are chosen. Citizens, as a rule, do not care who these electors are, and seldom even read their names; for they think that the office is a perfunctory one. If, for any reason, there are vacancies in the electoral college of a state, the members, when they convene, choose others to make up the number. Now if any of these numerous electors so carelessly chosen should, for corrupt reasons, or on some whimsical or fanatical principle, betray their trust, their votes and not the intentions of the citizens would count.

8. A person chosen for elector may prove to be technically ineligible. The Constitution stipulates that no elector shall be a "person holding an office of trust or profit under the United States."⁵ This restriction might be useful if the elector were a free agent, as it was intended he should be. But since his office has become perfunctory, this technical qualification may at times work mischief. Sometimes there may be a question whether a person is disqualified by this provision, and the decision may be made by the governor on partisan grounds. If a person chosen for elector should be ruled ineligible before the college convenes, his place would be forfeited to a rival of the other party and the vote of the state divided. If this disqualification were not discovered until later, his vote would become invalid. Through a dispute on this question of qualification, the entire electoral vote of the state may be put in question. In Oregon in 1876, three Republican electors were chosen. But the governor, a Democrat, adjudged one of these ineligible, and gave a certificate to the candidate having the highest number of votes on the Democratic ticket. All three Republicans that

⁵ Constitution, Art. II, 1².

were chosen met however by themselves and cast their ballots for Hayes and Wheeler. But the Democrat that had received the governor's certificate appointed two others to fill the "vacancies," and these three voted for Tilden and Hendricks. This shows the mischievous possibilities in the technical disqualification of electors.

9. A state might perhaps be disfranchised through failure of the electors to meet on the day that was appointed. The Constitution requires that the day on which the electors meet shall be "the same throughout the United States."⁶ In the year 1856, the electors of Wisconsin were prevented by a heavy fall of snow from gathering on the day that was appointed, and so their vote was cast at a later date. As the result of that particular election would be the same in either case, it was not officially decided whether the vote of these electors was valid or not; but if such a delay should occur again, the vote of the state would be put in jeopardy, and the election itself might depend on the outcome.

The Count in Congress

When the perils of the electoral colleges are past, two others are met in the counting of the vote by congress.

10. The entire electoral vote of a state may become invalid through a technical error in the returns. Such a thing happened to Arkansas in the year 1873. The certificate of the electors' votes did not bear the great seal of the state, because at that time Arkansas did not have one; but in its place the seal of the secretary of state was used. For this irregularity the vote was rejected by congress.

11. There is no constitutional provision for deciding disputed elections. This amazing omission brought us, in 1877, almost into another civil war. Since 1887 we have had a law for the settlement of such disputes. Fortunately we have not yet needed to invoke it. It leaves, in certain contingencies, the settlement of dispute as to the vote of a state to concurrent

⁶ Constitution, Art. II, 14.

action of the two houses of congress, or in case they do not agree, to the governor of the state concerned. This makes it possible in such cases that the vote may be made a foot-ball of politics. But, be the law good or bad, this is a matter that should be provided for by a rigid constitutional provision, rather than by a statute which might be suddenly changed in the interest of one or another party.

Interval between Election and Taking of Office

Between the November election and the inauguration in March is a long interval, and many things are liable to occur in it. Our electoral system adds in several ways to its faults by failing to provide for the contingencies of this time.

12. The new administration should come more quickly into office. It is unfair alike to the new President and to the old, that an interval of four months should elapse before the change of government is made. The retiring administration can do nothing in a constructive way in this interval, and so only routine business can be conducted. It would be peculiarly unfortunate to have some crisis, or even strained relations, in our intercourse with foreign nations, during the intervening time. We should, in the interest of good government and of responsibility and safety in our foreign relations, have a much shorter period between the election and the inauguration. But to have this, we must first of all abolish the electoral colleges, for they are the main cause of the long interval.

13. There is no satisfactory provision, in case the candidate that was chosen for President in November should die before the electors meet. Technically, and according to the intention of the Constitution, there is no President-elect until the electors have chosen him. Now in case the person for whom they were expected to vote should die, they would have to vote for some other person in his stead. This would put upon them a heavy responsibility, for which they would be in every way unfitted. We do not choose these electors to select a President for us, but for the merely perfunctory office of giving legal and binding form to our choice. Furthermore, they do not meet as one

body, but "in their respective states,"⁷ and so have no opportunity to consult and come to an agreement. But the electors of the successful party must of necessity vote as a unit for some person, or the other party will steal the election from them. There is then, only one feasible method by which they may agree on a substitute; and that is, to consult the national committee of their party. It is likely then, in such a contingency, that this national committee would virtually appoint the President. Instead of a President chosen by the people, we should have one that was selected by a small group of politicians and placed in office arbitrarily by them to serve their ends.

14. Provision is not made for succession, in case both the President-elect and the vice-president-elect should die after the electoral colleges have adjourned, but before the fourth of March. The twelfth amendment provides by implication that, if the President-elect die, the vice-president-elect shall succeed him. But no provision is made for the case of the vice-president-elect also dying. Senator Lodge says concerning this contingency, "Some way out of the grave situation thus created would no doubt be found, but it would have to be extra-constitutional and through an assumption of power by congress."⁸

Election by the House of Representatives

In case there is not a majority of the electoral vote for one candidate, it is required that the President be chosen by the house of representatives, from the three that had led the others in that vote.⁹ As it is exceptional for our Presidents to have received a majority in the popular vote, it would seem to be unnecessary that they should have it in that of the electoral colleges. An election by the house of representatives has occurred twice in our history, and might be made necessary again through a contest in which there should be three or more leading candidates, each particularly strong in one section. And the possibility of such an election contributes three more evils to our electoral system.

⁷ Constitution, Art. II, 1³; Am. XII.

⁸ *Scribner's Magazine*, vol. 35, p. 543.

⁹ Constitution, Am. XII.

15. In an election by the house of representatives, each state, whether large or small, has an equal vote. The constitutional provision is, that "the votes shall be taken by states, the representation from each state having one vote."¹⁰ This means, for example, that the vote of Nevada would be equal to that of New York, and the vote of New Mexico to that of Texas. It means subversion of government by the people to government by artificial and altogether unequal political units. This rule is a mischievous survival of the old and extreme state-sovereignty doctrine. It would give, in case we should have the unfortunate occasion to use it, extraordinary and dangerous power to a number of new states, sparsely settled, and at that often with a half-nomadic and largely alien population.

16. The election by the house might be blocked if one or two states should not vote. "A majority of all the states"—not simply of those that vote—is "necessary for a choice."¹¹ The election then may be prevented, provided there is a close vote, by the refusal of one or two states to cast any ballot; and in this way the leading candidate is prevented from securing "a majority of all the states." A state might indeed in good faith be prevented from voting, because of its representation being so divided as to have no majority for any candidate. Or on the other hand, it might intentionally refrain from voting, in order to prevent an election, or to extort concessions from the other states.

17. In an election by the house of representatives, it is not the new house but the old that chooses. It is in fact almost on the eve of its dissolution, that this body elects the new President with whom it is to have no dealings. And it may be also, that the house that chooses the President is dominated by a party or a set of ideas that was repudiated at the preceding general election.

All these three evils were exemplified in the election by the house of representatives in the year 1801. The twelfth amendment had not been adopted at that time. But that amend-

¹⁰ Constitution, Am. XII.

¹¹ Constitution, Am. XII.

ment affects chiefly the proceedings in the electoral colleges, leaving those in the house of representatives nearly the same as before.

This election was the sequel to a political overturn by which the Federalists were routed and the Republicans brought into power. Following the original rule of the Constitution,¹² each member of an electoral college had cast his ballot for two persons, without designating which of them was desired for President and which for vice-president. According to this rule, whoever should receive the largest number of votes was in that way elected President, and the person that should receive the next number would be elected vice-president. But in this case Jefferson, the candidate of the Republicans for President, and Burr, their candidate for vice-president, while leading the others, each received the same number of votes.

This brought the election into the house of representatives; and there the Federalists attempted to do as much as they could to thwart the will of their opponents. One of their plans was to elect Burr instead of Jefferson to the Presidency. Another was, to keep some of their states from voting, and so block the election. In both they were unsuccessful in the end. But the house balloted thirty-five times fruitlessly, the result at each count being eight states for Jefferson, six for Burr, and two not voting. If however the vote had been by members instead of by states, Jefferson would have had a majority on the first ballot. Or on the other hand, if a majority of the states voting, but not of all the states, were required, Jefferson would in that case likewise have been elected on the first ballot. But as it was, the deadlock continued to the thirty-sixth ballot, when most of the Federalists refrained from voting and Jefferson was accordingly elected.

The Twelfth Amendment

To avoid repetition of such scandalous and dangerous proceedings as those of the house election of 1801, the twelfth

¹² Constitution, Art. II, 1st.

amendment was adopted three years later, on the eve of the next Presidential election. By this, instead of voting for two persons without distinction, the electors are directed to name one for President and another for vice-president. This of course deprives the house of representatives of any power to make the presidential and vice-presidential candidates exchange places. But, as was proved in 1824, it does not take away the possibility of an election by that body; nor does it remove the three dangers that have been pointed out as pertaining to such an election. The twelfth amendment requires a majority of the electoral votes for a choice by the electoral colleges. If a plurality were sufficient, there would be very little danger of their failing at any time to make a choice. The twelfth amendment is faulty then, because it requires a majority. But, more than this, it is illogical, because it does not go to the root of the evil, which is the interposition of the electoral colleges between the popular voting and the legal choice of the President. The electoral colleges had become meaningless, because the electors were pledged. Either the position of responsibility contemplated by the Constitution should, if possible, have been secured for them, or their office should have been abolished. But because neither of these things was done, the evils that have been enumerated have been fostered in our electoral system. And finally, three other evils have developed, which are due to the system as a whole, rather than to any step in the process.

18. The vice-presidential office has been degraded, through the twelfth amendment. Even without that amendment, it would have been difficult enough to keep this office in the dignified standing it should possess. The Constitution commits in the first place the great error of giving the vice-president what is virtually a sinecure; for a man of such ability and public spirit as to make him suitable for succession to the Presidency dislikes to be elected to a four year's term of idleness. But the original rule for the votes of the electors¹³ was designed to support the dignity of the vice-presidential office, by bringing into it the

¹³ Constitution, Art. II, 1³.

defeated candidate for the Presidency. This procedure, however, would maintain the awkward situation of a President and a vice-president of opposed parties. For partisan reasons, if not for patriotic ones, the political managers of each side would endeavor so to influence the election as to obtain by it, if possible, a vice-president as well as President of their own party. It would be arranged that one or two of their electors should not vote for the second nominee of their party. In this way he would fall a little behind his running-mate; and if the latter should be elected President, the former would probably come second in the voting, and so be the choice for vice-president. This would, however, bring an element of uncertainty into the voting of the electors, at least for the second name on their ballot. They could not be so rigidly pledged as has become the custom, and it is uncertain how safely and wholesomely such a procedure would work. It might possibly have worked better, so far as the vice-presidential office is concerned, but it could not, in this respect, work worse than the rule that we now have. It is notorious that the parties seldom nominate vice-presidential candidates of recognized competency for succession to the Presidency. And the citizens, when they vote, are powerless to correct this fault. They cannot vote for President, without also voting for the vice-presidential nominee of the same party. And so we are doomed, through the twelfth amendment, to have, with a few fortunate exceptions, vice-presidents that are not competent for succession to the chief magistracy of our nation.

19. The system as a whole necessitates elaborate party machinery. The twelfth amendment has strengthened this necessity by depriving the electors of any occasion for exercising their individual judgment in the voting. The parties have to nominate not only a presidential and a vice-presidential candidate, but more than five hundred men besides for electors. And they must attend to innumerable details of this absurdly complicated system. So there must perforce be an elaborately organized and well-paid party machine. And that such an organization is to a large extent extra-legal gives it a sinister influence in our political life.

20. Our electoral system discourages minor parties and gives the two main ones permanence and a virtual monopoly. Since party organization is elaborate and expensive, it must needs be permanent. So when old issues are outworn, the party finds new ones, not from honest conviction but in order to maintain itself. On the other hand, new parties have not the experience, nor have minor ones the capital, to work efficiently; and so it is as a rule more feasible to work through one or the other of the two great organizations. The general-ticket system also discourages every minor party, because it cannot win a single electoral vote unless it captures a whole state. The citizen, too, is likely to feel that his vote is thrown away if he casts it for the candidate of one of these smaller movements. Or it may be that such votes may turn the electoral vote of the state from one to the other of the main parties. Even the election itself has been determined three times—in 1844, 1848, and 1884—by the vote of a minor party in New York State. In the last of these instances the Prohibition vote, mostly withdrawn from the Republican party, gave the Democratic ticket a plurality less than twelve hundred. This turned the 36 electoral votes of the state to Cleveland, and so made him, instead of Blaine, President. Such results may make it seem treacherous for a man to vote a minor ticket, and for this reason the minor parties poll a much smaller vote than would naturally be theirs. The citizen is, then, not allowed to choose his issues—except so far as he may do this within a party through its primaries—but must accept and vote upon those issues which the two great organizations choose to set before him.

These twenty evils make our electoral system unsuitable, injurious, and perilous, to popular government. Why then do we tolerate it? Partly because custom has blinded us to its evils and perils. Partly also, because we have had the notion that the Constitution cannot be amended without a civil war. And again, because of a reverence for the old Constitution and those who framed it. And yet again, because we have doubted whether any new system could be adopted that would be satisfactory.

The first of these reasons is answered in the twenty charges that have here been made against the present system. The second has in recent years been answered through the sixteenth and seventeenth amendments. As for the third reason—reverence for the Constitution and its authors—that should not hinder but rather hasten us to make the change. For, in the first place, we have already departed from the plan of the Constitution through the twelfth amendment. But this amendment was a makeshift, and should give place to a more logical and permanent measure. And, in the second place, from the start we violated the spirit of the Constitution and purpose of its framers, by pledging the electors. The fathers of the Constitution failed utterly in their intention to keep the choice of the President away from the people; and respect for them, as well as a desire to strengthen the charter that they bequeathed to us, should lead us to expunge the record of their failure.

The fourth reason will be treated in the second part of this paper, through proposals there outlined for a new system.

PROPOSED REMEDIES

The defects in our present electoral system are too numerous and too deep-seated to be remedied except by a radical change. The twelfth amendment should warn us against enacting any new makeshift of constitutional reform. We should either restore to the electors some measure at least of the independence and responsible authority that the fathers of the Constitution intended to give them, or else abolish the office and resort to some form of direct popular election. But to name this dilemma is to solve it. All our tendencies are now toward direct popular action in government, and away from the representative principle. These tendencies may need in some instances to be resisted, but we cannot think of adopting any new scheme that is directly opposed to them. Whatever power we might give to the electors must be taken away from the people, and to take any jot of power from the people is politically unthinkable. Our course then is clear as to this point. We cannot mend the electors' office, and so we must end it.

The most obvious plan for a direct election, and one that seems at first sight fair and simple, is to determine the choice by adding up the popular vote in all the states for each candidate. This however in reality would not be fair, and if it were made fair, it would not be simple. The voting is not under national but under state control; and the various states have by no means equal franchise laws. In some states the women have the suffrage, and the vote is vastly increased for that reason. In other states the vote is much reduced by restrictions upon negro suffrage. And there are also unequal requirements as to education and other matters. As long as these differences obtain, the plan of deciding the election by a direct addition of the votes in all the states would be grossly unfair. To make it fair, we should have to have a national suffrage law for presidential elections, and should have also to place these elections, and the registration for them, under national control. But, as our election of congressmen, which takes place at the same time, would remain under state control, the voter would have to be registered twice, and to submit to different tests, and perhaps to vote in two different places, if he would exercise his full suffrage. And besides these complications, many of our states would be strongly opposed to any interference with their own suffrage laws, and hence the requisite amendment could not be adopted.

Another plan would be to let each congressional district have one presidential vote, which should go for the candidate that had received a plurality there. This plan however, while less unfair than our present system, would be far from a just expression of majority rule. In 1824 Maryland, which then chose its electors by the district system, gave 43.7 per cent of her popular vote for Adams, and 43.3 for Jackson. But notwithstanding that Adams was thus slightly in the lead of Jackson in the popular vote, his electoral vote was only 3, while Jackson's was 7.

And thirdly, there may be an apportionment plan, by which each state would be considered as having a certain number of presidential votes, to be distributed among the candidates in proportion to the popular vote for each. By adding up the

presidential votes of all the states for each candidate, the choice would be determined. J. B. Dougherty¹⁴ proposed a plan in which the vote of the state should be equal to the members it would have, according to the present system, in its electoral college. But that would perpetuate the injustice of permitting certain states with very small populations to give an electoral vote of from three to eight times as great as it should be by a just apportionment. A more equitable apportionment plan would be such as will be here outlined as the first item of suggestions for a new system of presidential election.

The Apportionment Vote

Let each state be accorded what we may call an apportionment vote for President; and let the extent of this vote be proportional to the state's relative population. A convenient standard would be the number of a state's representatives in congress. But as the apportionment vote would have to be divided among different candidates, it should be larger than the number of congressmen. Three times that number is suggested, as perhaps as suitable a figure, all things considered, as any.

This apportionment vote of the state would of course be divided among the candidates according to the relative size of the popular vote for each; and the vote of the nation would be determined by adding the apportionment votes for the various candidates.

A state's apportionment vote would of course not divide exactly into whole numbers for the candidates. The fraction then, if it should be more than half, should be counted for one, but otherwise it should not be counted. Thus if a candidate should have 10.51 votes, it would count him as 11. If a minor candidate should have more than half an apportionment vote, it would count him as 1; but if he should not obtain more than one-half, he would have no apportionment vote in that state.

On account of these fractions, the total vote of the state would sometimes be more or less than the number apportioned to it. This apportionment should be considered, then, as a basis for the division of the vote, but not as rigidly fixing the total. The gain or loss of one vote to a state would be shared by several candidates, so that none would be seriously affected by it.

¹⁴ *The Electoral System of the U. S.* (Putman, N. Y., 1906), pp. 364 ff.

How this system would work, and particularly in a close or much divided election when it would be put to a severe test, is shown in detail in the table, in which this apportionment plan is applied to the elections of 1860, 1876, 1884, 1888, and 1916.

It appears from this table,¹⁵ that this plan reverses the result of the elections of 1876 and 1888. In this however it is in accord with the popular vote, which gave pluralities to Tilden and Cleveland. Furthermore, it will be seen that the apportionment vote for every candidate in each of these years is substantially in accord with the popular vote for him. This shows that the plan works fairly to all. The inaccuracies due to the fractions in distributing the vote in each state are slight, and tend to equalize one another in the various states. The apportionment vote then, is a fair and reliable indication of the relative number of people that desire one or another candidate to be elected. Any President that should be chosen through a plurality of apportionment votes, might be confidently regarded as the choice of the people for the office.

In the table the names of some minor candidates appear, with apportionment votes for them, in some of the states. Except in 1860, these minor candidates, as the table shows, received no electors' votes. The apportionment vote, it appears then, does not suppress the minor parties, as the present system does. Nevertheless a minor candidate may receive so few popular votes that no state will give him even one in its apportionment. There were candidates of this character in the years treated in the table; but, since they did not win any apportionment votes, they do not appear in the lists. In no case however did any one of these have as much as one per cent of the popular vote. The apportionment vote then, is not only fair to the two leading candidates, but does substantial justice to all.

¹⁵ *Explanation of signs in table.* -Indicates the total vote for the state is one less than the apportionment.

+Indicates the total vote is one more than the apportionment.

A number in black type indicates the electors' votes were given to that candidate.

A number dotted beneath indicates the electors' votes were divided between that and another candidate.

TABLE OF APPORTIONMENT VOTES
(Three times as many votes to a state as it has representatives in congress)

	1860				1876			1884				1888				1916			
	Lincoln (R.)	Douglas (D.)	Breckinridge	Bell (C. U.)	Tilden (D.)	Hayes (R.)	Cooper (Gbk.)	Cleveland (D.)	Blaine (R.)	Butler (Gbk.)	St. John (Pro.)	Cleveland (D.)	Harrison (R.)	St. John (Pro.)	Streeter (Labor)	Wilson (D.)	Hughes (R.)	Benson (Soc.)	Hanly (Pro.)
Alabama.....		-3	-11	-6	14	10		15	9			16	8			23	7		
Arizona.....																2	1		
Arkansas.....		1	3	2	7	5		9	6			9	6			14	9	1	
California.....	2	2	2		6	6		-8	-9			-8	-9			-15	-15	-1	-1
Colorado.....					Legisla ture				2			1	2			7	5		
Connecticut.....	-7	-2	-2		6	6		6	6			6	6			-7	-7		
Delaware.....	1		1	1	2	1		2	1			2	1			-7	1		
Florida.....			2	1	3	3		3	3			4	2			+9	2	+1	+1
Georgia.....		+3	+12	+10	19	8		20	10			-21	-8			33	3		
Idaho.....																-3	-2		
Illinois.....	14	13			+27	+29	+2	28	30	1	1	28	30	2		35	43	2	1
Indiana.....	19	14			19	19	1	19	19	1		19	19	1		18	19	1	1
Iowa.....	3	3			10	16	1	16	17			15	17		1	12	14	1	
Kansas.....					+3	+6	+1	-7	-12	-1		7	12		2	12	11	1	
Kentucky.....		5	11	14	-18	-11		-18	-14			18	15			-17	-15		
Louisiana.....		2	5	5	9	9		10	8			13	5			22	2		
Maine.....	12	5	1		6	9		5	7			5	7			6	6		
Maryland.....		-1	-8	-8	10	8		-9	-8			9	9			-9	-8		
Massachusetts.....	21	7	1	4	14	19		15	17	3	1	16	19	1		-22	-24	-1	
Michigan.....		5			12	14	1	-15	-16		-1	16	16	1		-17	-20	-1	
Minnesota.....	4	2			4	5		6	9			6	8	1		+14	+14	+2	+1

Mississippi.....	-2	1 -7	9 -4	5 -7	12 23	6 16		13 -23	8 -19		15 -21	6 -19		-1	-22 24	-1 23	1
Missouri.....															-3 -2		
Montana.....															-10 7		
Nebraska.....					1	2		4	5		4	5			2	1	
Nevada.....					1	2		1	2		1	2			3	3	
New Hampshire.....	5	4			4	5		3	3		3	3			15	20	1
New Jersey.....	7	8			11	10		-10	-10		10	10			1		
New Mexico.....															-1	-1	
New York.....	53	46			51	48		-49	-49	-1	-2	-49	-50		-57	-66	-2
North Carolina.....		1	12	11	13	11		14	13			14	13		17	13	
North Dakota.....															-4	-4	
Ohio.....	32	27	2	2	-29	-30		30	32		1	30	31		-34	-29	-2
Oklahoma.....															12	8	4
Oregon.....	1	1	1		1	2		1	2			1	2		-4	-4	
Pennsylvania.....	42	3	28	2	39	41	1	37	44	2	1	38	44		43	59	4
Rhode Island.....	4	2			2	4		-2	-3			3	3		4	5	
South Carolina.....	(Legislatur e)				7	8		16	5			17	4		20	1	
South Dakota.....															-4	-4	
Tennessee.....		-2	-13	-14	18	12		-15	-14			16	14		17	13	
Texas.....			5	1	13	5		-23	-9			22	8		42	9	3
Utah.....															4	2	
Vermont.....	-7	-1			3	6						2	4		2	4	
Virginia.....		-4	-17	-17	16	11		15	15			15	15		20	10	
Washington.....															7	7	1
West Virginia.....															9	9	
Wisconsin.....	5	4			5	4		6	6			6	6		9	9	
Wyoming.....					12	12		12	14		1	12	13		14	16	2
Total apportionment vote.....	248	179	150	110	450	419	7	487	460	9	8	498	451	17	5	552	33
Popular vote, per cent.....	39.9	29.4	18.1	12.5	50.9	47.9	0.9	49.1	48.5	1.3	1.5	48.7	47.8	2.2	1.2	49.2	46.1
Electorors' vote.....	180	12	72	39	184	185		219	182			168	233			277	254

Counting the Votes

The present system requires that the electors' votes should be counted in congress. But as this involves the settlement of disputes as to votes, it would be better to take the counting out of the hands of a partisan body such as congress necessarily is. The counting of the votes is essentially a judicial act. It should be lodged then in a judicial body, or in some commission under judicial supervision. The count of the apportionment votes, then, should be under the direction of the supreme court of the United States; and the justices might if necessary appoint an electoral commission, but should themselves finally decide and announce the result of the vote.

Election by the House

Our present system requires that, if no candidate receive a majority of electors' votes, the retiring house of representatives shall elect the President. Our history shows it to be unreasonable to expect majority votes by a fair and natural method of counting. The majorities for our Presidents have usually been obtained artificially by the general-ticket system. Save in the first half-century of government by our Constitution, it has been quite the exception for the successful candidate to receive a majority of the popular vote. Their failure, however, to receive half the votes that were cast, was due to the minor candidates in the field, each of whom represented but a small fraction of the popular will. It is not significant that a few groups of men with ideas at variance with the main body of public opinion should reduce the leading candidate's vote to something less than a majority. But it is desirable that his plurality should be a substantial one. For otherwise, as voting is at best an inaccurate expression of the popular will, we cannot be sure that we have elected the President that the people most want. We might reasonably require that the leading candidate, in order to be elected, must have one per cent more votes than his nearest rival. If he fails to attain that much plurality, it would be doubtful whether he really would be the choice of the larger number of citizens.

In the case, then, that no candidate receives a plurality of one per cent on the total apportionment vote, it would be well to let the members-elect of the future house of representatives choose the President from among the two leading candidates, or from more than two if there be others having a vote within one per cent of the highest. This house of representatives will have to work with the President, and so in the interest of harmony it would be well for it to choose, when the people's choice is not clear and decisive. The members-elect then should, upon notification, convene as an electoral college. They should vote as individuals, and not as states. A majority of the votes cast—not of the members—should be necessary to a choice.

The Vice-President, and the Presidential Succession

The office of vice-president is superfluous in our government, and should be abolished. Congress should provide for the presidential succession, as it now does in case of the death or disability of both President and vice-president. There has seldom been a time in our history, when the people would not rather see the secretary of state than the vice-president succeed to the Presidency. So it would be in the interest of good and safe government, to have the office of vice-president abolished. It would also be much to the interest of the voter to have but one candidate to choose instead of two.

In case the President-elect should die, the outgoing President should remain in office until a special election could be held. Congress should in this case immediately provide for a special presidential election. If it should be unable to do so before its term expires, the new congress should be immediately called by the President in special session for this purpose.

Election and Inauguration

The interval between election and inauguration should be very much shortened. Enough time should intervene to enable the vote under ordinary circumstances to be counted, and perhaps a week more for the members-elect of the new house to

meet if necessary as an electoral college. If the count should not be completed before the date of inauguration, or if the electoral college should be in session and not have made a choice, the outgoing President should remain in office until his successor is determined.

These five proposals are not so mutually necessary that they stand or fall together. Neither are they of equal importance. The plan for an apportionment vote is most important. But as this would not remedy all the evils in our present method of election, it seems better, in proposing a change, to outline a new system in its entirety. For it is a new system that we need—not merely a change in some part but a reconstruction throughout. Nothing less than that will suffice. What we now have is, to modify a well-known phrase, a thing “of shreds and patches” and beyond further mending. It should also be beyond our further endurance; for it is a constant injury and menace to our democratic institutions.